

IN THE UTAH COURT OF APPEALS

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Ricky D. Waiters,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner,)	
)	Case No. 20100336-CA
v.)	
)	
Labor Commission and America)	F I L E D
Online,)	(June 24, 2010)
)	
Respondents.)	2010 UT App 174

Original Proceeding in this Court

Attorneys: Ricky D. Waiters, Ogden, Petitioner Pro Se
Gregory W. Stevens, Salt Lake City, for Respondent
America Online

Before Judges Orme, Thorne, and Voros.

PER CURIAM:

Ricky D. Waiters petitions for review of the Labor Commission's (the Commission) order affirming the dismissal of his charge of discrimination as untimely. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

The Utah Antidiscrimination Act requires that a request for agency action be filed with the appropriate state agency within 180 days of the alleged discriminatory act. See Utah Code Ann. § 34A-5-107(1)(c) (2005). For complaints filed with the federal agency, charges must be made within 300 days of the alleged discriminatory act. See 42 U.S.C. § 2000e-5(e)(1) (2000). A claim of discrimination is time barred if not filed within these time limits. See AMTRAK v. Morgan, 536 U.S. 101, 109 (2002).

Waiters filed his charge of discrimination with the Utah Antidiscrimination Labor Division (the Division) on February 1, 2006.¹ After discovery, it was clearly established that the last

¹Waiters filed a questionnaire with the Division in December 2004. The Division responded with two letters noting that it
(continued...)

alleged discriminatory act asserted by Waiters occurred in 2004, well beyond even the more generous 300-day time period to file a federal discrimination claim. Accordingly, the Commission did not err in dismissing Waiters's claim as untimely.

After this case was initiated, Waiters asserted that a new discriminatory incident occurred in March 2006. However, Waiters did not seek to amend his claim, nor did he file a new claim. Accordingly, the Commission did not err in determining that the new incident was not properly before it. See id. at 113 ("Each discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the 180- or 300-day time period after the discrete discriminatory act occurred."(emphasis added)).

Affirmed.

Gregory K. Orme, Judge

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge

¹(...continued)
lacked jurisdiction over the items identified in the questionnaire and would take no further action. Waiters did not pursue any further action at that time. The charge filed in 2006 is a new and separate claim.